

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58367; File No. SR-NYSE-2008-75)

August 15, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 303A.02(b) of the Listed Company Manual with respect to Two of its Director Independence Tests

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 2008, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make amendments to two of the tests with respect to the independence of directors set forth in Section 303A.02(b) of the Exchange’s Listed Company Manual (the “Manual”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make amendments to two of the tests with respect to the independence of directors set forth in Section 303A.02(b) of the Manual.

Direct Compensation Test

Section 303A.02(b)(ii) of the Manual provides that a director may not be deemed independent for purposes of Section 303A if such director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than \$100,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service). NYSE proposes to increase the dollar threshold in this test from \$100,000 to \$120,000. This change reflects the SEC's August 2006 amendment to the dollar threshold applicable to related party transactions that must be disclosed under Item 404 of Regulation S-K.³ Prior to the SEC's amendment to Item 404, the applicable threshold for disclosures was \$60,000. The NYSE believes that the monetary threshold in its independence definition should be consistent with the amount in Regulation S-K Item 404. Using a consistent standard would enhance the NYSE's ability to assess compliance with the independent director requirements because companies are required to

³ See Securities Act Release No. 8732A (August 29, 2006).

disclose compensation in excess of \$120,000, but are not necessarily required to disclose compensation between \$100,000 and \$120,000.

Auditor Test

Additionally, NYSE is proposing to amend the bright line test set out in Section 303A.02(b)(iii) relating to a listed company's internal or external auditor. The test currently precludes a director from being deemed independent if:

- the director or an immediate family member is a current partner of a firm that is the company's internal or external auditor;
- the director is a current employee of such a firm;
- the director has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or
- the director or an immediate family member was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time.

NYSE's experience to date has demonstrated that the current standard with respect to immediate family members has had the effect of precluding a director from being deemed independent in cases even where an immediate family member had no relationship to the listed company's audit. For example, NYSE's current test has required a listed company's board to conclude that a director may no longer be deemed independent when the director's child took an entry-level job in the audit practice of the listed company's external auditor upon graduation

